

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN O. HARDY,

Plaintiff,

v.

Case No. 1:08-CV-385

GEORGE JURKAS and,
MARK BURNS,

HON. GORDON J. QUIST

Defendants.

ORDER ADOPTING
REPORT AND RECOMMENDATION

On June 8, 2009, Magistrate Judge Brenneman issued a report and recommendation that the Court grant Defendant Lt. Mark Burns' motion for summary judgment based upon Plaintiff's failure to exhaust his administrative remedies. Lt. Burns supported his motion with an affidavit and a computer printout of Plaintiff's grievance activity. The magistrate judge noted that Plaintiff failed to respond to the motion. Therefore, he concluded that it was undisputed that Plaintiff failed to properly exhaust his claim against Lt. Burns. The magistrate judge thus recommended that the motion be granted and the case dismissed.

Plaintiff did not file an objection, but did file a belated response to the motion for summary judgment, which the Court construes as an objection. After conducting a *de novo* review of the report and recommendation and the entire record, and having considered Plaintiff's objection, the Court will adopt the report and recommendation.

Plaintiff states in his objection that he did file grievances against Lt. Burns and that Lt. Burns told Plaintiff to either tear up his grievances or be subjected to additional punishment. Plaintiff

states that Lt. Burns threw the grievances away and put Plaintiff in top lock for an additional seven days without a mattress. Plaintiff further states that he has jail guards or deputies and other prisoners who will testify that Plaintiff did in fact write and submit the grievances and Lt. Burns threw them away.

Although Plaintiff's statements might be sufficient to create a genuine issue of material fact if supported by a properly sworn affidavit, Plaintiff has failed to submit an affidavit. Similarly, although he has had ample time, Plaintiff has failed to submit affidavits from the witnesses he claims will support his allegations. For these reasons, Plaintiff has failed to properly respond to Lt. Burns' motion for summary judgment. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued June 8, 2009 (docket no. 17) is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (docket no. 12) is **GRANTED** and this case is **DISMISSED**.

This case is **concluded**.

Dated: August 14, 2009

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE